

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

A.H.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	Cause No. 1:17-cv-4153-RLY-DML
THE BOARD OF SCHOOL	)	
COMMISSIONERS FOR THE CITY OF	)	
INDIANAPOLIS d/b/a	)	
INDIANAPOLIS PUBLIC SCHOOLS;	)	
DR. LEWIS D. FEREBEE,	)	
Individually and in his Official Capacity; and	)	
SHANA TAYLOR,	)	
Individually and in her Official Capacity	)	
	)	
Defendants.		

**DEFENDANTS IPS AND DR. FEREBEE’S ANSWER TO COMPLAINT**

The Board of School Commissioners for the City of Indianapolis d/b/a Indianapolis Public Schools (“IPS”) and Dr. Lewis D. Ferebee (“Dr. Ferebee”) (the “IPS Defendants”), by counsel, answer Plaintiff’s Complaint as follows:

**Nature of Complaint**

1. During the 2015-2016 school year, A.H. attended Positive Supports Academy in the Longfellow Building, which is also known as Longfellow Alternative School (hereinafter “Positive Supports Academy”). Positive Supports Academy is an alternative school in the IPS school district.

**ANSWER:** IPS Defendants admit the allegations in Paragraph 1 of the Complaint.

2. A.H. was sixteen (16) years old at the start of the 2015-2016 school year. During the school year, TAYLOR, an IPS employee, used her position as the school counselor at

Positive Supports Academy to sexually abuse and harass A.H. on school premises throughout a five-month period.

**ANSWER:** IPS Defendants admit that A.H. was sixteen (16) years old at the start of the 2015-2016 school year. IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 2 of the Complaint. IPS Defendants deny that they violated Plaintiff's rights under the United States Constitution or any other law, and deny Plaintiff is entitled to any relief in this action.

3. A.H. suffered sexual abuse, harassment, and discrimination and he seeks damages for the harm wrought by IPS's failure to keep him safe in his school environment, and its failure to sufficiently supervise and train its officials and staff at Positive Supports Academy, as well as for the harm caused by the sexual abuse, harassment, and discrimination. IPS authorized TAYLOR to perform school counselor duties with Positive Supports Academy students. In her role as school counselor, TAYLOR was in a position of trust with IPS students. IPS controlled its staff members, including TAYLOR as its school counselor.

**ANSWER:** IPS Defendants admit that Plaintiff asserts claims against IPS and Dr. Ferebee and seeks damages, and admit that Taylor was employed as a school counselor at Positive Supports Academy. IPS Defendants deny that they violated Plaintiff's rights under the United States Constitution or any other law with respect to Plaintiff, deny Plaintiff is entitled to any relief in this action, and deny the remaining allegations in Paragraph 3 of the Complaint.

4. IPS's own negligence and the negligent hiring, retention, and supervision of its subordinates resulted in a failure to implement safeguards to protect its students from predatory sexual behavior. IPS's counseling and guidance programs function as important protections against abuse and harassment, and IPS failed to train its officials and staff to recognize and

report abuse, discrimination, and harassment by the school counselor or other staff members and employees. Consequently, TAYLOR was given free reign over IPS's counseling and guidance programs at Positive Supports Academy which she used to sexually abuse, harass, and injure A.H. The IPS counseling program's abuse and harassment were harmful to the interests of A.H. and, upon information and belief, other Positive Supports Academy students.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 4 of the Complaint.

**I. Jurisdiction and Venue**

5. Plaintiff, A.H. was a student of IPS residing in Marion County at all relevant times to this action.

**ANSWER:** IPS Defendants admit that A.H. was a student of IPS during the 2015-2016 school year. IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 5 of the Complaint.

6. Defendant Indianapolis Public Schools is the corporate name of a public school system located in Indianapolis, Indiana.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 6 of the Complaint.

7. Defendant The Board of School Commissioners of the City of Indianapolis, the governing body of IPS, is located in Indianapolis, Indiana.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 7 of the Complaint.

8. Defendant Dr. Lewis Ferebee was the Superintendent of IPS and resided in Marion County, Indiana at all times relevant to this action.

**ANSWER:** IPS Defendants admit the allegations in Paragraph 8 of the Complaint.

9. The Court has personal jurisdiction over all parties.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint.

10. This action is brought pursuant to 42 U.S.C. § 1983 and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.* (hereinafter “Title IX”).

**ANSWER:** IPS Defendants admit that Plaintiff asserts claims pursuant to 42 U.S.C. § 1983 and Title IX. IPS Defendants deny that they violated Plaintiff’s rights under the United States Constitution or any other law with respect to Plaintiff, and deny Plaintiff is entitled to any relief in this action.

11. This Court has original subject matter jurisdiction for the federal questions presented herein, pursuant to 28 U.S.C. § 1331.

**ANSWER:** IPS Defendants admit the allegations in Paragraph 11 of the Complaint.

12. Plaintiff further invokes the supplemental jurisdiction of this Court to hear and decide Plaintiff’s claims arising under Indiana state law.

**ANSWER:** IPS Defendants admit that Plaintiff invokes the supplemental jurisdiction of this court pursuant to 28 U.S.C. § 1367, but deny that such jurisdiction is proper.

13. Venue is proper in this Court and Division, under 28 U.S.C. § 1391(b), in that a substantial part of the events or omissions giving rise to this action occurred in the County of Marion, State of Indiana, which is located in the Indianapolis Division of the Southern District of Indiana.

**ANSWER:** IPS Defendants admit that some events described in the Complaint occurred in Indianapolis, Indiana, which is in Marion County, Indiana, and deny the remaining allegations in Paragraph 13 of the Complaint.

## **II. Parties**

14. At all times relevant herein, A.H. was a minor child and resident and citizen of the City of Indianapolis, County of Marion, and State of Indiana.

**ANSWER:** Defendants admit that A.H. was a minor child during the 2015-2016 school year. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 14 of the Complaint.

15. At all times relevant herein, A.H. was a Black/African-American male student enrolled at Positive Supports Academy.

**ANSWER:** IPS Defendants admit that A.H. is a Black/African-American male and that he was enrolled at Positive Supports Academy for a portion of the 2015-2016 school year, and deny the remaining allegations in Paragraph 15 of the Complaint.

16. At all times mentioned herein, the Defendant, The Board of School Commissioners of the City of Indianapolis, was the corporate name as well as the governing body of a public-school corporation created by the State of Indiana pursuant to Indiana Code § 20-25-3, commonly known as the Indianapolis Public Schools, to govern, manage, and control various public schools, including Positive Supports Academy. IPS operates within the State of Indiana, County of Marion, and City of Indianapolis.

**ANSWER:** IPS Defendants admit that The Board of School Commissioners of the City of Indianapolis is the corporate name of the public school corporation created by the State of Indiana pursuant to Indiana Code § 20-25-3, commonly known as the Indianapolis Public Schools. IPS Defendants further admit that, pursuant to Indiana Code 20-25-3-1, The Board of School Commissioners of the City of Indianapolis is name of the legal entity that governs, manages, and controls IPS, including Positive Supports Academy. IPS Defendants further admit that IPS operates within the State of Indiana, County of Marion, and City of Indianapolis, and deny the remaining allegations in Paragraph 16 of the Complaint.

17. At all relevant times herein, IPS was a recipient of federal funds and subject to the terms and conditions of Title IX.

**ANSWER:** IPS Defendants admit the allegations in Paragraph 17 of the Complaint.

18. At the time A.H. was sexually abused, harassed, and discriminated against, as described herein, Defendant, FEREBEE, was an administrator licensed in the State of Indiana, was acting under color of state law and as an agent and employee of IPS, and was Superintendent of IPS.

**ANSWER:** IPS Defendants admit that Dr. Ferebee is an administrator licensed in the State of Indiana and is Superintendent of IPS, and deny the remaining allegations in Paragraph 18 of the Complaint.

19. At all times relevant herein, TAYLOR was a school counselor licensed in the State of Indiana, and was acting under color of state law and as an agent and employee of IPS as a school counselor at Positive Impacts Academy.

**ANSWER:** IPS Defendants admit that Taylor was a counselor licensed in the State of Indiana and was employed as a school counselor at Positive Supports Academy for a portion of the 2015-2016 school year, and deny the remaining allegations in Paragraph 19 of the Complaint.

### **III. Facts**

20. At all times relevant herein, the acts and/or omissions of IPS officials and employees recounted herein were performed and/or omitted by and through IPS agents, employees, servants and/or representatives acting within the course and scope of their employment and under the color of law.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 20 of the Complaint.<sup>1</sup>

21. Prior to and during the period of time which TAYLOR harassed and sexually abused A.H., IPS was aware of TAYLOR's misconduct and inappropriate interactions with Positive Supports Academy students.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 21 of the Complaint.

22. Upon information and belief, soon after the 2015-2016 school year began, Positive Supports Academy and/or IPS officials detected a pattern of students gathering in TAYLOR's office without a valid reason for being in her office.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 22 of the Complaint.

23. TAYLOR's office was originally located on an upper level of the Positive Supports Academy building, away from the majority of school officials and employees, and the location enabled her to host male students in her office.

**ANSWER:** IPS Defendants admit that Taylor's office was originally located above the main level at Positive Supports Academy, and deny the remaining allegations in Paragraph 23 of the Complaint.

24. Upon information and belief, IPS discovered a pattern of male students missing class only to be found in TAYLOR's office or with TAYLOR.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 24 of the Complaint.

25. Positive Supports Academy administrators discovered TAYLOR had provided a staff laptop to a male student and subsequently confiscated the gifted laptop from the student.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief regarding the truth of the allegations in Paragraph 25 of the Complaint.

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<sup>1</sup> Plaintiff's Complaint included headings, which are not included in IPS Defendants' Answer. To the extent a response to the headings is required, IPS Defendants deny the allegations contained in each and every heading.

26. Upon information and belief, upon discovering this pattern, Positive Supports Academy officials moved TAYLOR's office to the main level of the Positive Supports Academy building, two doors away from the school principal's office.

**ANSWER:** IPS Defendants admit that Taylor's office was moved to the main level at Positive Supports Academy, and deny the remaining allegations in Paragraph 26 of the Complaint.

27. Upon information and belief, school officials did not take any other remedial measures and failed to adequately investigate TAYLOR's conduct.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 27 of the Complaint.

28. By failing to take any other remedial measures or to investigate TAYLOR's conduct, the school was aware of TAYLOR's misconduct, yet chose to turn a blind eye.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 28 of the Complaint.

29. While performing her employment duties, TAYLOR engaged in a course of conduct that included providing special treatment and gifts to and other inappropriate behavior toward A.H. for the purpose of gaining his trust and confidence and conditioned A.H. to trust her. This conduct is referred to hereinafter as "grooming."

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to whether Taylor engaged in the conduct described in Paragraph 29 of the Complaint, and deny that Taylor's alleged conduct occurred "while performing her employment duties."

30. On or about September of 2015, TAYLOR approached A.H. after a student body meeting and introduced herself.



**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 of the Complaint.

31. Days later, TAYLOR approached A.H. in the school cafeteria and asked him for his Facebook username.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 of the Complaint.

32. Upon information and belief, and based on statements TAYLOR made to A.H., TAYLOR targeted A.H. because he is a Black male.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 of the Complaint.

33. That night, or shortly thereafter, TAYLOR sent a Facebook “friend request” to A.H., and began sending inappropriate messages to A.H. through Facebook, wherein she expressed interest in getting to know him.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33 of the Complaint.

34. Upon information and belief, TAYLOR communicated with other Positive Supports Academy students on Facebook.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34 of the Complaint.

35. On or about the day after TAYLOR sent her friend request to A.H., A.H. was involved in an incident at school and IPS issued A.H. an out-of-school suspension.

**ANSWER:** IPS Defendants admit that A.H. was issued an out-of-school suspension on various dates during the 2015-2016 school year, and are without knowledge or information

sufficient to form a belief as to the truth of the remaining allegations in Paragraph 35 of the Complaint.

36. Through the course of her employment, specifically her status as the school counselor, TAYLOR learned that A.H. had been suspended from school and contacted him.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36 of the Complaint.

37. TAYLOR sent a message to A.H., in which she told him that she heard he was suspended and offered to bring him food from a fast food restaurant.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37 of the Complaint.

38. Upon information and belief, during school hours on the first day of A.H.'s suspension, TAYLOR left school and went to A.H.'s home.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38 of the Complaint.

39. TAYLOR told A.H. she was coming from a counseling session at another student's home and stopped by his house before returning to school.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 of the Complaint.

40. TAYLOR brought A.H. a fast food meal to his home and asked him if he wanted to smoke marijuana.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40 of the Complaint.

41. TAYLOR retrieved marijuana from her car and smoked it with A.H.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 of the Complaint.

42. Then, TAYLOR and A.H. engaged in sexual intercourse.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42 of the Complaint.

43. On subsequent occasions during the 2015-2016 school year, TAYLOR went to A.H.'s classroom during school hours and requested that A.H.'s teachers excuse him from class for counseling sessions.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43 of the Complaint.

44. During the purported counseling sessions with A.H., TAYLOR turned the conversation to sex and made sexual remarks.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44 of the Complaint.

45. Instead of providing A.H. with counseling, TAYLOR would bring A.H. to her office to engage in sexual intercourse and/or oral sex with him.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45 of the Complaint.

46. TAYLOR performed oral sex on A.H. and had sexual intercourse with him during the counseling sessions, which occurred inside the school and during school hours.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 of the Complaint.

47. TAYLOR conducted extended and repeated counseling sessions with A.H., and, upon information and belief, other male students, with these counseling sessions occurring on the school premises and behind the closed locked door and covered window of TAYLOR's office.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 of the Complaint.

48. On certain days, TAYLOR would remove A.H. from his classroom two (2) or more times in the same day for the purpose of sexual intercourse.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 of the Complaint.

49. Upon information and belief, IPS's lack of oversight and supervision over TAYLOR, and its rules and policies, or lack thereof, allowed TAYLOR to take A.H. off campus frequently; and on at least one occasion was involved in a vehicle accident while pulling into the school parking lot with A.H. in her car.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations regarding a vehicle accident on school property involving Taylor and A.H., and deny the remaining allegations in Paragraph 49 of the Complaint.

50. In addition to Facebook messages, TAYLOR communicated with A.H. via mobile telephone text messaging.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 of the Complaint.

51. Upon information and belief, TAYLOR would use text messages to convince A.H. to come to her office during the school day.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 of the Complaint.

52. Upon information and belief, during the school day, TAYLOR would leave school grounds to meet with A.H.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52 of the Complaint.

53. Upon information and belief, TAYLOR, based on information she obtained as school counselor, knew when A.H. was suspended and sent him text messages to coordinate off-campus meetings.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 of the Complaint.

54. TAYLOR also sent sexually explicit photographs of herself to A.H. via text message, including but not limited to photographs of:

- A. TAYLOR's vagina;
- B. TAYLOR's breasts;
- C. TAYLOR's buttocks; and
- D. TAYLOR in a state of full nudity.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 of the Complaint.

55. TAYLOR continued grooming A.H. by showing him attention and giving him gifts during and after school hours:

- A. Upon information and belief, Positive Supports Academy did not allow outside food and drinks; but TAYLOR openly brought fast food to school for A.H.;
- B. Upon information and belief, Positive Supports Academy did not allow students to bring their mobile telephones into the school building; yet TAYLOR regularly smuggled A.H.'s phone onto school grounds for him;
- C. TAYLOR took A.H. to the shopping outlets in Edinburgh, Indiana, and purchased new shoes for him;
- D. TAYLOR purchased liquor and marijuana for A.H. and used these substances with him;
- E. On numerous occasions, TAYLOR would pick A.H. up at the bus stop and even let A.H. drive her car to school, even though A.H. did not have a valid driver's license;
- F. On numerous occasions, A.H. would drop TAYLOR off in front of the school building and then park her car; and
- G. Took A.H. to her home in Johnson County for the purpose of having sexual intercourse with him.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 of the Complaint.

56. It was during one of these meetings with A.H. that TAYLOR told him that she desired him because he was Black.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56 of the Complaint.

57. A.H. received numerous suspensions throughout the 2015-2016 school year for absences.

**ANSWER:** IPS Defendants admit that A.H. was issued several out-of-school suspensions during the 2015-2016 school year, and deny the remaining allegations in Paragraph 57 of the Complaint.

58. Upon information and belief, IPS and its principals at Positive Supports Academy identified A.H.'s unauthorized absences through their use of the school's camera system, yet failed to investigate the underlying cause of his absences.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 58 of the Complaint.

59. Upon information and belief, IPS punished A.H. for the absences which were caused by his meetings with TAYLOR, and these punishments included out-of-school suspensions.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 59 of the Complaint.

60. In February of 2016, TAYLOR confronted A.H. about a relationship he was having with a female student.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 of the Complaint.

61. TAYLOR was jealous of the relationship and told A.H. that she was recommending to Positive Supports Academy that A.H. be placed on a half-day schedule.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 of the Complaint.

62. Upon information and belief, half-day schedule isolated students from their peers by placing them in a single classroom from approximately 7:30 a.m. to 12:30 p.m. and then sent

home. Half-day schedule also meant removing these students from educational services and opportunities provided by Positive Supports Academy and provided instruction solely through an online platform called Ingenuity.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 62 of the Complaint.

63. Upon information and belief, TAYLOR made the recommendation to Positive Supports Academy officials that A.H. should be placed on half-day schedule.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 63 of the Complaint.

64. TAYLOR's conduct negatively impacted A.H.'s education.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64 of the Complaint. IPS Defendants deny that they violated Plaintiff's rights under the United States Constitution or any other law, and deny Plaintiff is entitled to any relief in this action.

65. On or about February 17, 2016, Janet H. ("JANET"), A.H.'s mother, learned that her son was being sexually abused and harassed by a woman at Positive Supports Academy, who was later identified as TAYLOR.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 65 of the Complaint.

66. JANET immediately contacted Positive Supports Academy officials to inform them of the abuse and harassment.

**ANSWER:** IPS Defendants admit that on February 17, 2016, Janet notified Positive Supports Academy officials of her belief that a woman at Positive Supports Academy, who was later identified as Taylor, was having an inappropriate relationship with her son, and deny the remaining allegations in Paragraph 66 of the Complaint.



67. JANET provided officials with evidence of TAYLOR's conduct, including sexually explicit text messages and pictures that TAYLOR had sent to A.H.

**ANSWER:** IPS Defendants admit that Janet provided IPS officials with text messages and sexually explicit pictures that she believed Taylor had sent to A.H., and deny the remaining allegations in Paragraph 67 of the Complaint.

68. Upon information and belief, JANET initially reported the information to Beryl Borel, an IPS employee.

**ANSWER:** IPS Defendants admit that on February 17, 2016, Janet notified Beryl Borel, an IPS employee, of her belief that a woman at Positive Supports Academy, who was later identified as Taylor, was having an inappropriate relationship with her son, and deny the remaining allegations in Paragraph 68 of the Complaint.

69. JANET subsequently met with school administrators at Positive Supports Academy.

**ANSWER:** IPS Defendants admit the allegations in Paragraph 69 of the Complaint.

70. After receiving notice of the abuse and harassment, school administrators failed to immediately report the abuse and harassment to DCS or law enforcement, as required by Indiana Code § 31-33-5-1.

**ANSWER:** IPS Defendants admit that certain school administrators failed to immediately report the information provided by Janet to DCS or law enforcement, and deny the remaining allegations in Paragraph 70 of the Complaint.

71. Upon information and belief, JANET's initial reporting of the sexual abuse and harassment to Positive Supports Academy, along with the subsequent meeting with IPS officials and Positive Supports Academy staff members concerning the same, caused a flurry of telephone

calls and conversations between and among IPS leadership and staff; however, no one took any immediate action to report the abuse and harassment. Upon information and belief, these communications involved, but were not limited to:

- A. Positive Supports Academy principals and staff members;
- B. IPS Director of Student Services (Deb Leser);
- C. IPS Human Resources Director (Lela Tina Hester);
- D. IPS Deputy Superintendent (Wanda Legrand);
- E. IPS Chief Strategist (Le Boler);
- F. IPS Human Resources officer (Sandra Bombic);
- G. IPS Superintendent (FEREBEE)<sup>2</sup>; and
- H. IPS Title IX Coordinator and case manager (Shalon Dabney).

**ANSWER:** IPS Defendants admit that there were telephone calls and/or other communications involving the individuals named in Subparagraphs 71(A) through (H) following Janet's initial report of an inappropriate relationship involving her son, and deny the remaining allegations in Paragraph 71 of the Complaint.

72. Following the meeting with leadership at Positive Supports Academy, IPS officials ordered Positive Supports Academy administrators not to inform DCS or law enforcement of TAYLOR's abuse and harassment.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 72 of the Complaint.

73. According to court records and media reports, IPS's Human Resources Director, Lela Tina Hester ("Hester") instructed Positive Supports Academy administrators not to get the

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<sup>2</sup> Upon information and belief, and notably, FEREBEE worked at Durham Public Schools in North Carolina with Legrand and Boler prior to starting at IPS, and when he arrived at IPS he coordinated the addition of Legrand and Boler to his staff at IPS.

police involved, stating that “the school police should stay out of it so that [TAYLOR] is not charged and [IPS] can handle from [a human resources] perspective[.]”<sup>3</sup>

**ANSWER:** IPS Defendants admit that in an email dated February 18, 2016, from IPS’s former Human Resources Director, Lela Tina Hester (“Hester”), to IPS’s Chief Strategist, Le Boler, Hester wrote: “I asked that the school police stay out of it so that she is not charged and we can handle from an HR perspective ....” IPS Defendants expressly deny that contacting the police is the same as making a report to CPS, as the two are wholly separate organizations. IPS Defendants deny the remaining allegations in Paragraph 73 of the Complaint.

74. According to court records, and upon information and belief, school administrators followed Hester’s instructions.<sup>4</sup>

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 74 of the Complaint.

75. Instead of reporting the abuse and harassment to DCS and/or law enforcement, Hester and other IPS officials proceeded to handle TAYLOR’s abuse and harassment internally, treating it as a human resources matter.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 75 of the Complaint.

76. Instead of reporting the abuse and harassment to DCS and/or law enforcement, IPS conducted an interview with TAYLOR regarding the abuse and harassment.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 76 of the Complaint.

77. IPS’s decision to perform an internal interview and investigation, instead of reporting the abuse to DCS and/or law enforcement, placed A.H.’s safety and security at risk.

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<sup>3</sup> Melissa Mahadeo, *IPS Supt. Ferebee goes on record in closed-door meeting about Shana Taylor case*, THE INDY CHANNEL (Jun. 25, 2016), available at <http://www.theindychannel.com/news/local-news/ips-supt-ferebee-goes-on-record-in-closed-door-meeting-about-shana-taylor-case>; Verified Compl. for Damages & Injunctive Relief & Req. Trial by Jury at ¶ 88, *Leser vs. Indianapolis Public Schools*, No. 1:16-cv-2044 (S.D. Ind.).

<sup>4</sup> Verified Compl. at ¶ 88, *Leser vs. Indianapolis Public Schools*, No. 1:16-cv-2044.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 77 of the Complaint.

78. IPS's course of action provided notice to TAYLOR that allegations of abuse had been made without implementing any reasonable safeguards to protect A.H.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 78 of the Complaint.

79. Upon information and belief, TAYLOR went to A.H.'s home immediately after her interview with IPS in an attempt to interfere with or influence A.H.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 79 of the Complaint.

80. IPS and Positive Supports Academy officials did not report the abuse and harassment until February 23, 2016, six (6) days after first receiving notice of the situation.

**ANSWER:** IPS Defendants admit that IPS and Positive Supports Academy officials did not make a report regarding the information provided by Janet until February 23, 2016, and deny the remaining allegations in Paragraph 80 of the Complaint.

81. According to an IPS statement, IPS emphasized that TAYLOR was barred from Positive Supports Academy. The reasonableness of IPS's actions is contradicted by TAYLOR's attempted confrontation with A.H. following her meeting with IPS.

**ANSWER:** IPS Defendants admit that IPS issued statements regarding the allegations that were made against Taylor and that at least one statement noted that Taylor was barred from Positive Supports Academy, and deny the remaining allegations in Paragraph 81 of the Complaint.

82. Upon information and belief and according to media reports, IPS did not make the decision to report TAYLOR's abuse until after media outlets began to report on the situation.<sup>5</sup>

**ANSWER:** IPS Defendants deny the allegations in Paragraph 82 of the Complaint.

83. Immediately after officials finally reported TAYLOR's abuse and harassment, media coverage drastically increased, and IPS's mishandling of its obligations became public knowledge.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 83 of the Complaint.

84. According to media reports, FEREBEE called the situation a "clear case of incompetence," and stated that the six (6) day delay in reporting the abuse and harassment was "unacceptable."<sup>6</sup>

**ANSWER:** IPS Defendants admit that Dr. Ferebee referred to the situation as a "clear case of incompetence" and referred to the delay in reporting as "unacceptable." IPS Defendants further admit that Footnote 5 cites a media report regarding the situation, and deny the remaining allegations in Paragraph 84 of the Complaint.

85. To make matters worse, upon information and belief, IPS approved A.H.'s placement in the half-day schedule after JANET reported TAYLOR's abuse on February 17, 2016, effectively punishing A.H., removing him from educational opportunities, and effectuating the half-day schedule that had been orchestrated by his abuser.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 85 of the Complaint.

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<sup>5</sup> Marisa Kwiatkowski, *Exclusive: Emails reveal more detail in IPS' handling of abuse case*, INDYSTAR, (May 26, 2016), available at <http://www.indystar.com/story/news/education/2016/05/26/emails-reveal-more-detail-ips-handling-abuse-case/84932148/>

<sup>6</sup> Marisa Kwiatkowski, *IPS superintendent calls delay in reporting abuse 'clear case of incompetence'*, INDYSTAR, (March 4, 2016), available at <http://www.indystar.com/story/news/education/2016/03/04/ips-superintendent-discuss-investigation-into-allegations-serious-employee-misconduct/81315150/>

86. IPS's decision to place A.H. in half-day schedule was not based on A.H.'s best interest in regard to his education or development.

**ANSWER:** Defendants deny the allegations in Paragraph 86 of the Complaint.

87. IPS admits that:

- A. it owes a duty of care to its students to provide for their safety and security;
- B. it failed to immediately report TAYLOR's sexual abuse, discrimination, and harassment to DCS;
- C. the TAYLOR incident is disturbing;
- D. the TAYLOR incident was not handled well by far too many people; and
- E. the TAYLOR situation was a clear case of incompetence.

**ANSWER:** IPS Defendants admit there is a duty under Indiana law to exercise ordinary and reasonable care for the safety of students, that the allegations against Taylor were not reported to DCS immediately, that the allegations against Taylor are disturbing, and that Dr. Ferebee referred to the miscommunications that led to the delay in reporting the allegations against Taylor to DCS as a "clear case of incompetence." IPS Defendants deny the duty of care was breached in any way and deny the remaining allegations in Paragraph 87 of the Complaint.

88. Upon information and belief, school officials had, or should have had, a reasonable belief that TAYLOR's behavior posed a risk to its students based on her pattern of inappropriate behavior and grooming male students.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 88 of the Complaint.

89. The officials' decision to move TAYLOR's office neither remedied TAYLOR's conduct nor prevented further inappropriate conduct between TAYLOR and male students, as TAYLOR's sexual abuse and harassment of A.H. continued until February of 2016.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 89 of the Complaint.

90. Upon information and belief, school officials failed to implement standards and policies designed to prevent sexual abuse, harassment and other inappropriate conduct between school employees and students.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 90 of the Complaint.

91. Upon information and belief, school officials failed to provide teachers and school employees with additional training to help identify potential warning signs of sexual abuse or harassment.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 91 of the Complaint.

92. Upon information and belief, school officials failed to adequately supervise the school environment at Positive Supports Academy.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 92 of the Complaint.

93. Upon information and belief, had IPS and FEREBEE implemented adequate supervision of the Positive Supports Academy, including supervision over its school counseling program, TAYLOR's conduct would have been detected as obvious signs of grooming.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 93 of the Complaint.

94. According to the IPS website, Positive Supports Academy serves students in grades six through twelve (6-12).<sup>7</sup> Specifically, it is an alternative school serving students that had demonstrated social or behavioral difficulties in the traditional classroom setting.

**ANSWER:** IPS Defendants admit the allegations in Paragraph 94 of the Complaint.

95. The Positive Supports Academy daily curriculum specifically includes ensuring “student counseling and academic support.”<sup>8</sup>

**ANSWER:** IPS Defendants admit that the Positive Supports IPS webpage states that “[c]ounseling, conflict resolution, and character development are included in the daily curriculum,” and deny the remaining allegations in Paragraph 95 of the Complaint.

96. IPS alternative schools strive to help students improve their academic skills, become more responsible, develop self-control, and modify behavior.

**ANSWER:** IPS Defendants admit the allegations in Paragraph 96 of the Complaint.

97. Upon information and belief, IPS recognized that A.H. was having difficulty in the traditional classroom setting and it assigned him to Positive Supports Academy.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 97 of the Complaint.

98. Unlike A.H.’s previous school, Positive Supports Academy had heightened security measures in place, such as metal detectors.

**ANSWER:** IPS Defendants admit that Positive Supports Academy had a metal detector, but deny the remaining allegations in Paragraph 98 of the Complaint.

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<sup>7</sup> INDIANAPOLIS PUBLIC SCHOOLS, ALTERNATIVE EDUCATION PROGRAMS, available at <https://www.myips.org/Page/34369> (last visited Oct. 16, 2017); INDIANAPOLIS PUBLIC SCHOOLS, ALTERNATIVE EDUCATION PROGRAMS, *Positive Supports Academy*, available at <https://www.myips.org/site/default.aspx?PageType=3&ModuleInstanceID=51031&ViewID=7b97f7ed-8e5e-4120-848f-a8b4987d588f&RenderLoc=0&FlexDataID=35845&PageID=34369> (last visited Oct. 16, 2017) (hereinafter Positive Supports Academy IPS webpage).

<sup>8</sup> Positive Supports Academy IPS webpage, *supra* note 7.



99. Upon information and belief, Positive Supports Academy had security cameras in its building, which allowed principals and other administration staff members the opportunity to monitor and supervise activity throughout the building.

**ANSWER:** IPS Defendants admit that Positive Supports Academy had some security cameras in its building, and deny the remaining allegations in Paragraph 99 of the Complaint.

100. The Positive Supports Academy's curriculum provides:

- A. computer-based and classroom instruction;
- B. academic skill development;
- C. behavioral support; and
- D. counseling, conflict resolution, and character development.<sup>9</sup>

**ANSWER:** IPS Defendants admit the allegations in Paragraph 100 of the Complaint.

101. Positive Supports Academy and IPS have a duty to ensure student safety and security.

**ANSWER:** IPS Defendants admit there is a duty under Indiana law to exercise ordinary and reasonable care for the safety of students, but deny that duty was breached in any way and deny the remaining allegations in Paragraph 101 of the Complaint.

102. Positive Supports Academy and IPS have an obligation to provide a safe, non-hostile environment for students to learn.

**ANSWER:** IPS Defendants admit there is a duty under Indiana law to exercise ordinary and reasonable care for the safety of students, but deny that duty was breached in any way and deny the remaining allegations in Paragraph 101 of the Complaint.

103. IPS policy required a planned program of counseling as an integral part of its educational program.<sup>10</sup>

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<sup>9</sup> Positive Supports Academy IPS webpage, *supra* note 7.

**ANSWER:** IPS Defendants admit that IPS Bylaws and Policies 2411: Guidance and Counseling states, *inter alia*, that “[t]he Board requires that a planned program of guidance and counseling be an integral part of the educational program...,” and deny the remaining allegations in Paragraph 103 of the Complaint.

104. School counselors are also required to perform certain statutory duties, including, *inter alia*, their obligation to perform an annual review on a student’s graduation plan, to monitor the student’s progress, and provide career and education services.<sup>11</sup>

**ANSWER:** IPS Defendants admit that Ind. Code § 20-30-4-6 sets out certain responsibilities to be performed by school counselors in relation to a student’s graduation plan and that school counselors are expected to monitor student progress and provide career and education services, and deny the remaining allegations in Paragraph 104 of the Complaint.

105. IPS authorized and empowered its school counselors to be in a position of trust with its students.

**ANSWER:** IPS Defendants admit that IPS employs school counselors, and deny the remaining allegations in Paragraph 105 of the Complaint.

106. The Indiana Department of Education has adopted the American School Counselor Association’s Ethical Standards for School Counselors, which:

- A. “[s]erve as a guide for the ethical practices of all school counselors, supervisors/directors of school counseling programs and school counselor educators . . .”;
- B. “[p]rovide support and direction for self-evaluation, peer consultation and evaluations regarding school counselors’ responsibilities . . .”;

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<sup>10</sup> IPS, Bylaws and Policies, Guidance and Counseling, No. 2411 (Sep. 26, 2006).

<sup>11</sup> Ind. Code § 20-30-4-6 (2015).

- C. “[i]nform all stakeholders, including students, parents/guardians, teachers, administrators, community members and courts of justice of best ethical practices, values and expected behaviors of the school counseling professional.”<sup>12</sup>

**ANSWER:** IPS Defendants admit that the allegations in Paragraph 106 accurately recite a portion of the American School Counselor Association’s Ethical Standards for School Counselors, but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 106 of the Complaint.

107. Under these Ethical Standards, schools and their counselors owe duties and responsibilities to students, which include, *inter alia*:

- A. supporting student development;
- B. confidentiality;
- C. guidance on academic, career, and social or emotional planning;
- D. managing boundaries, both in assisting the student in development and management of relationship boundaries and in managing the counselor-student relationship; and
- E. ensuring student safety, especially for underserved and at-risk student populations.<sup>13</sup>

**ANSWER:** IPS Defendants admit that the allegations in Paragraph 107 of the Complaint identify some of the responsibilities the American School Counselor Association’s

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<sup>12</sup> AMERICAN SCHOOL COUNSELOR ASSOCIATION, *ASCA Ethical Standards for School Counselors* (2016), available at <https://www.doe.in.gov/student-services/student-assistance/legal-and-ethical> (last visited Oct. 16, 2017) (hereinafter ASCA Ethical Standards).

<sup>13</sup> ASCA Ethical Standards.

Ethical Standards for School Counselors identify as owed by school counselors to students, and deny the remaining allegations in Paragraph 107.

108. Under these Ethical Standards, IPS school administrators and supervisors owe duties and responsibilities to students concerning its school counselor programs, which include, *inter alia*:

- A. providing adequate resources to school counselor programs;
- B. ensuring that school counselor programs meet the needs of their students;
- C. providing appropriate supervision and training; and
- D. eliminating conditions or practices that are illegal or interfere with educational services provided to students.<sup>14</sup>

**ANSWER:** IPS Defendants admit that the allegations in Paragraph 108 of the Complaint identify some of the strategies the American School Counselor Association's Ethical Standards for School Counselors identify as ways school counselor administrators and supervisors can support school counselors, and deny the remaining allegations in Paragraph 108.

109. IPS required FEREBEE to perform additional duties and responsibilities, which included, *inter alia*, implementation of the counseling and guidance program.<sup>15</sup>

**ANSWER:** IPS Defendants admit that IPS Bylaws and Policies 2411: Guidance and Counseling states, *inter alia*, that: "The Superintendent is directed to implement the counseling and guidance program ...," and deny the remaining allegations in Paragraph 109 of the Complaint.

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<sup>14</sup> ASCA Ethical Standards.

<sup>15</sup> IPS, Bylaws and Policies, Guidance and Counseling, No. 2411 (Sep. 26, 2006).

110. Upon information and belief, IPS and its officials and employees represented to the students that the school counselor program was in place to help the students with, *inter alia*, their counseling, guidance, stress relief, and problem-solving needs.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 110 of the Complaint.

111. Upon information and belief, IPS and its officials and employees required or encouraged, depending on the circumstances, students to participate in the school counselor and guidance counselor programs.

**ANSWER:** IPS Defendants admit the allegations in Paragraph 111 of the Complaint.

112. Upon information and belief, IPS and FERELEE failed, *inter alia*, (i) to implement monitoring and supervision duties in the counseling and guidance programs at Positive Supports Academy; (ii) to train its officials, teachers, and staff on sexually abusive, harassing, and discriminatory behavior by school counselors or other staff members; and (iii) to immediately report sexual abuse that occurred at Positive Supports Academy.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 112 of the Complaint.

113. Upon information and belief, IPS also failed to establish rules and requirements providing safeguards to students during counseling sessions.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 113 of the Complaint.

114. The counseling and guidance programs at Positive Supports Academy involved practices or conditions that were damaging or harmful to A.H. and, upon information and belief, to other Positive Supports Academy students, including, but not limited to, closed-door meetings with students, sexual harassment, discrimination, and abuse.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 114 of the Complaint.

115. Student counseling sessions took place inside the school and during school hours. Further, upon information and belief, IPS allowed or authorized its school counselor to conduct counseling sessions with students at their homes during school hours.

**ANSWER:** IPS Defendants admit that school counselors are expected to meet with students for counseling sessions inside the school and during school hours, and deny the remaining allegations in Paragraph 115 of the Complaint.

116. Upon information and belief, under IPS's control and authorization, IPS's employee conducted counseling sessions with students in the students' homes.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to whether any IPS employee conducted counseling sessions with students in the students' home, but deny that any such sessions were "under IPS's control and authorization" and deny the remaining allegations in Paragraph 116 of the Complaint.

117. Upon information and belief, as early as September of 2015, IPS was aware of inappropriate relationships between TAYLOR and Positive Supports Academy students, including but not limited to the following occurrences:

- A. Students would skip class and regularly congregate in TAYLOR's office;
- B. TAYLOR contributed to and was responsible for students' unauthorized absences;
- C. TAYLOR provided gifts or special treatment to male students;
- D. TAYLOR provided a male student with a staff computer, which was confiscated by an IPS official; however, IPS administrators failed to investigate or take any other corrective action to address TAYLOR's behavior;

E. TAYLOR regularly removed A.H. and, upon information and belief, other male students, from the classroom setting; and

F. TAYLOR regularly met with A.H., and upon information and belief other male students, during school hours in her office with the door locked and the window covered or blocked.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 117 of the Complaint.

118. Widespread media coverage of TAYLOR's conduct and IPS's mishandling of its obligations caused A.H. to suffer humiliation among his fellow students and A.H. struggled with anger management after the abuse and harassment came to light.

**ANSWER:** IPS Defendants deny "mishandling of its obligations," and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 118 of the Complaint.

119. IPS's failures and TAYLOR's abusive relationship with A.H., including her retaliation and sexual abuse, harassment, and discrimination, have caused A.H. to suffer physically and emotionally and harmed his education and development.

**ANSWER:** IPS Defendants deny any "failures" toward Plaintiff, and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 119 of the Complaint.

120. TAYLOR's conduct caused A.H. to be absent from class and this had a detrimental impact on his education and his ability to take advantage of the educational opportunities afforded to him as a student.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 120 of the Complaint.

121. Upon information and belief, IPS's failures allowed TAYLOR to continue her course of conduct and persist in her sexual harassment, discrimination and abuse against A.H. for months.

**ANSWER:** IPS Defendants deny any "failures" toward Plaintiff, and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 121 of the Complaint.

122. Upon information and belief, school officials' deliberate indifference to TAYLOR's obvious misconduct with male students resulted in continuing sexual abuse and harassment against A.H. and other male students.

**ANSWER:** IPS Defendants deny any "deliberate indifference to Taylor's obvious misconduct," and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 122 of the Complaint.

123. Upon information and belief, IPS did not have policies or training in place at Positive Supports Academy to assist its teachers and staff members in recognizing grooming or other warning signs of abuse or harassment involving students.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 123 of the Complaint.

124. Had IPS implemented proper procedures and training at Positive Supports Academy, IPS officials or staff members would have been trained to identify the warning flags that TAYLOR's conduct should have raised.

**ANSWER:** Plaintiff's allegations in Paragraph 124 of the Complaint are pure speculation to which a response is not required; however, to the extent a response is needed, IPS Defendants deny the allegations in Paragraph 124 of the Complaint



125. Upon information and belief, had IPS implemented rules and policies concerning its counseling program at Positive Supports Academy, including the supervision thereof and training related to sexual abuse, harassment, and discrimination involving students, TAYLOR's conduct would have been discovered sooner or prevented.

**ANSWER:** Plaintiff's allegations in Paragraph 125 of the Complaint are pure speculation to which no response is required; however, to the extent a response is required, IPS Defendants deny the allegations in Paragraph 125 of the Complaint.

## **V. Claims**

### **COUNT I – TITLE IX CLAIM AGAINST IPS**

126. Plaintiff hereby repeats and alleges paragraphs 1 through 125 and incorporates the same as if fully set forth herein.

**ANSWER:** IPS Defendants incorporate Paragraphs 1 through 125 of their Answer as if fully set forth herein.

127. A.H. belongs to a protected group under Title IX.

**ANSWER:** IPS Defendants admit the allegations in Paragraph 127 of the Complaint.

128. As described herein, A.H. was subjected to quid pro quo and hostile environment sexual harassment because of his gender and race.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 128 of the Complaint.

129. As described herein, A.H. was also subjected to sexual abuse and discrimination because of his gender and race.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 129 of the Complaint.

130. The harassment, sexual abuse, discrimination and its aftermath were so pervasive that it altered, detracted from, and undermined the conditions of A.H.'s education, and denied him equal access to IPS resources and opportunities.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 130 of the Complaint.

131. IPS officials, principals and staff at Public Supports Academy restricted or delayed reporting of TAYLOR's sexual abuse.

**ANSWER:** IPS Defendants admit that certain IPS officials, principals, and/or staff at Public Supports Academy failed to immediately report the information provided by Janet regarding Taylor's alleged inappropriate relationship with A.H., and deny the remaining allegations in Paragraph 131 of the Complaint.

132. IPS also had knowledge of TAYLOR's inappropriate behavior with students.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 132 of the Complaint.

133. TAYLOR's misconduct and discrimination against A.H. culminated in obvious grooming and regular closed-door meetings.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 133 of the Complaint, but deny that they violated Plaintiff's rights under the United States Constitution or any other law, and deny Plaintiff is entitled to any relief in this action.

134. IPS officials, principals, and staff at Public Supports Academy had authority to institute corrective measures but failed to do so.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 134 of the Complaint.

135. IPS officials, including its principals at Positive Supports Academy, had notice of TAYLOR's inappropriate relationship and conduct with A.H. yet failed to take reasonably responsive measures or follow express Indiana law.

**ANSWER:** IPS Defendants deny that IPS officials, including its principals at Positive Supports Academy, had notice of Taylor's alleged inappropriate relationship and conduct with

A.H. prior to February 17, 2016, and deny the remaining allegations in Paragraph 135 of the Complaint.

136. IPS officials condoned TAYLOR's misconduct through its policies, customs and/or practices of empowering TAYLOR with authority while overlooking or disregarding TAYLOR's conduct and failing to implement safeguards.

**ANSWER:** Defendants deny the allegations in Paragraph 136 of the Complaint.

137. IPS officials were indifferent towards TAYLOR's misconduct and A.H.'s safety, as they failed to report the abuse and harassment to DCS or law enforcement as required by law, and instead interviewed TAYLOR for their own investigation.

**ANSWER:** Defendants deny the allegations in Paragraph 137 of the Complaint.

138. IPS officials intentionally failed to immediately report TAYLOR's abuse and harassment to DCS or law enforcement, and instructed administrators at Positive Supports Academy not to immediately report the misconduct.

**ANSWER:** Defendants deny the allegations in Paragraph 138 of the Complaint.

139. IPS's decision to interview TAYLOR internally, instead of contacting DCS or law enforcement, gave TAYLOR notice of the allegations and an opportunity to go to A.H.'s house in an attempt to dissuade him from cooperating with any investigations.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 139 of the Complaint.

140. As a result of the aforementioned wrongful conduct, A.H. experienced anger and humiliation, suffered the loss of academic and career opportunities, and suffered other injuries and damages, some of which are permanent in nature.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 140 of the Complaint relating to A.H.'s

emotional state, opportunities, and alleged injuries, but IPS Defendants deny that they violated Plaintiff's rights under the United States Constitution or any other law, and deny Plaintiff is entitled to any relief in this action.

**COUNT II – 42 U.S.C. § 1983 CLAIMS AGAINST IPS**

141. Plaintiff hereby repeats and alleges paragraphs 1 through 125 and incorporates the same as if fully set forth herein.

**ANSWER:** IPS Defendants incorporate Paragraphs 1 through 125 of their Answer as if fully set forth herein.

142. IPS failed to train its teachers, principals, and other staff at Positive Supports Academy regarding sexual abuse, sexual harassment, and other misconduct involving students.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 142 of the Complaint.

143. Additionally, IPS, and its officials, failed to control and supervise the guidance and counseling program at Positive Supports Academy.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 143 of the Complaint.

144. Inconsistent and disproportional practices existed at Positive Supports Academy, and A.H. was harmed by said inconsistencies and practices.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 144 of the Complaint.

145. For a period of six (6) months during the 2015-2016 school year at Positive Supports Academy, and in the course of TAYLOR's scope of employment as school counselor:

- A. TAYLOR removed A.H. from his classroom on numerous occasions for the purpose of sexual harassment, sexual abuse, and other misconduct;
- B. TAYLOR regularly met with A.H. in closed-door meetings with the door locked and windows blocked or covered;

- C. Upon information and belief, TAYLOR regularly met in her office with other Positive Supports Academy Black male students with the door locked and windows blocked or covered;
- D. TAYLOR accessed A.H.'s student information through the course of her duties as school counselor and used the information to isolate and manipulate A.H.;
- E. TAYLOR groomed A.H., showing him special attention and providing him with special favors and gifts;
- F. Upon information and belief, TAYLOR directed special attention to other Black male students;
- G. TAYLOR sexually harassed and abused A.H. and at least one (1) other student;
- H. TAYLOR's sexual harassment, abuse and misconduct occurred during school hours and on school premises, specifically in her office;
- I. Upon information and belief, TAYLOR had the authority to and did conduct counseling sessions with students off school premises and at their residences;
- J. IPS punished A.H. for missing class on occasions that A.H. was under the control of TAYLOR, and said punishment included out-of-school suspensions;
- K. IPS received information about TAYLOR's misconduct and failed to report it to DCS for six (6) days;

- L. IPS officials directed other IPS officials and staff members not to involve law enforcement or DCS in the investigation of TAYLOR so that the Human Resources department could conduct its own internal investigation;
- M. Upon information and belief, IPS placed A.H. on half-day schedule after TAYLOR's abuse and harassment was reported to Positive Supports Academy;
- N. Upon information and belief, IPS placed A.H. on half-day schedule without considering what was in A.H.'s best interest.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 145 of the Complaint.

146. TAYLOR sexually abused, harassed, and otherwise discriminated against A.H. because of his gender and race in violation of A.H.'s right to equal protection pursuant to the Fourteenth Amendment to the United States Constitution, and in violation of A.H.'s right to be free from sexual abuse pursuant to the Fourteenth Amendment to the United States Constitution.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 146 of the Complaint.

147. IPS and its officials promoted, allowed, or authorized school policies and practices that enabled TAYLOR to victimize male students.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 147 of the Complaint.

148. IPS and its officials failed to implement and/or enforce school policies and practices that would have prevented or identified TAYLOR's victimization of male students.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 148 of the Complaint.

149. IPS and its officials allowed TAYLOR to operate the school counseling and guidance programs without supervision or oversight, creating widespread policies, customs, or practices that caused injuries to A.H. and, upon information and belief, to other students.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 149 of the Complaint.

150. IPS and its officials ignored obvious warning signs that TAYLOR:

- A. targeted A.H. and other Black male students;
- B. used her status as school counselor to groom and isolate A.H. and other Black male students;
- C. provided gifts and special treatment to A.H. and other Black male students;
- D. harassed, abused and committed other misconduct in the scope of her employment during school hours and on school premises in her office;
- E. was meeting with A.H. and other students outside of school premises without any safeguards;
- F. exhibited a pattern of leaving school premises without any restrictions;
- G. used her status as school counselor to assist A.H. in leaving school premises; and
- H. caused A.H. to be absent from class while IPS punished A.H. for these absences.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 150 of the Complaint, including all Subparagraphs.

151. IPS provided inadequate training and supervision in identifying warning signs of sexual abuse and how to respond to the said abuse.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 151 of the Complaint.

152. IPS ignored TAYLOR's widespread pattern of grooming A.H. and, upon information and belief, other students.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 152 of the Complaint.

153. IPS failed to provide adequate training on how to identify grooming of students.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 153 of the Complaint.

154. IPS and its officials' conduct amounts to a deliberate indifference to the safety of A.H.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 154 of the Complaint.

155. IPS and its officials failed to act despite obvious and repeated warning signs.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 155 of the Complaint.

156. IPS and its officials ignored known or obvious consequences of their failure to train or supervise its administrators and staff at Positive Supports Academy and thereby created a school atmosphere in which TAYLOR's abuse, harassment and discrimination flourished.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 156 of the Complaint.

157. Additionally, IPS adopted a widespread practice or custom of allowing TAYLOR to set her own policies for the Positive Supports Academy's counseling and guidance programs, thereby constituting a custom or usage with force of law.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 157 of the Complaint.

158. As a result of the aforementioned wrongful conduct, A.H. experienced anger and humiliation, suffered the loss of academic and career opportunities, and suffered other injuries and damages, some of which are permanent in nature.



**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 158 of the Complaint relating to A.H.'s emotional state, opportunities, and alleged injuries, but IPS Defendants deny that they violated Plaintiff's rights under the United States Constitution or any other law, and deny Plaintiff is entitled to any relief in this action.

**COUNT III - 42 U.S.C. § 1983 CLAIMS AGAINST TAYLOR**

159. Plaintiff hereby repeats and alleges 1 through 125 and incorporates the same as if fully set forth herein.

**ANSWER:** IPS Defendants incorporate Paragraphs 1 through 125 of their Answer as if fully set forth herein.

160. TAYLOR sexually abused, harassed, and otherwise discriminated against A.H. because of his gender and race in violation of A.H.'s right to equal protection pursuant to the Fourteenth Amendment to the United States Constitution, and in violation of A.H.'s right to be free from sexual abuse pursuant to the Fourteenth Amendment to the United States Constitution.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 160 of the Complaint.

161. IPS authorized or allowed TAYLOR to establish and create harmful practices for Positive Supports Academy's guidance and counseling programs.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 161 of the Complaint.

162. TAYLOR created a policy, custom, or practice of causing harm to A.H., and upon information and belief, to other students at Positive Supports Academy.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 162 of the Complaint.

163. TAYLOR used her status as a guidance counselor, and school employee, at Positive Supports Academy to manipulate, abuse and harass A.H. and, upon information and belief, other male students.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 163 of the Complaint relating to Taylor's actions, but IPS Defendants deny that they violated Plaintiff's rights under the United States Constitution or any other law, and deny they are liable to Plaintiff in any way.

164. TAYLOR's pursuit and eventual abuse and harassment of A.H. occurred during the school year, through the course of her employment as a guidance counselor and school employee, and on school premises during school hours.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 164 of the Complaint relating to Taylor's actions, but IPS Defendants deny Defendants Taylor acted "through the course of her employment," and deny that they violated Plaintiff's rights under the United States Constitution or any other law, and deny they are liable to Plaintiff in any way.

165. As a result of the aforementioned wrongful conduct, A.H. experienced anger and humiliation, suffered the loss of academic and career opportunities, and suffered other injuries and damages, some of which are permanent in nature.

**ANSWER:** IPS Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 165 of the Complaint relating to A.H.'s emotional state, opportunities, and alleged injuries, but IPS Defendants deny that they violated Plaintiff's rights under the United States Constitution or any other law, and deny Plaintiff is entitled to any relief in this action.

#### **COUNT IV – NEGLIGENT SUPERVISION AND TRAINING**

166. Plaintiff hereby repeats and alleges paragraphs 1 through 125 and incorporates the same as if fully set forth herein.

**ANSWER:** IPS Plaintiff hereby repeats and alleges 1 through 125 and incorporates the same as if fully set forth herein.

167. At all relevant times herein, school policies required, and Defendants IPS and FEREBEE admit they had, a duty to keep students safe and protect students within the district, to include students at Positive Supports Academy.

**ANSWER:** IPS Defendants admit there is a duty under Indiana law to exercise ordinary and reasonable care for the safety of students, including students at Positive Supports Academy, but deny any breach of that duty and deny the remaining allegations in Paragraph 167 of the Complaint.

168. At all relevant times herein, Defendants IPS and FEREBEE had a duty to supervise officials, counselors, teachers and other staff members.

**ANSWER:** IPS Defendants admit there is a duty under Indiana law to exercise reasonable care in supervising an employee, but deny any breach of that duty and deny the remaining allegations in Paragraph 168 of the Complaint.

169. At all relevant times herein, Defendants IPS and FEREBEE had a duty to supervise students.

**ANSWER:** IPS Defendants admits there is a duty under Indiana law to exercise ordinary and reasonable care for the safety of students, but deny any breach of that duty, and deny the remaining allegations in Paragraph 169 of the Complaint.

170. At all relevant times herein, IPS required A.H. to attend school and also created relationships between officials, counselors, teachers, or other staff members and students.

**ANSWER:** IPS Defendants admit A.H. is required by law to attend school, and deny the remaining allegations in Paragraph 170 of the Complaint.

171. At all relevant times herein, Defendants IPS and FEREBEE had a duty to properly train and supervise its principals, teachers, and staff members, to include taking steps to eliminate conditions or practices that violate, discourage or interfere with the ethics and laws related to school counselors and ensuring practices that are consistent with the Ethical Standards for School Counselors.

**ANSWER:** IPS Defendants admit there is a duty under Indiana law to exercise reasonable care in hiring, supervising, and retaining an employee, but deny any breach of that duty, and deny the remaining allegations in Paragraph 171 of the Complaint.

172. At all relevant times herein, Defendant IPS had a duty not to employ teachers, coaches, counselors, or other staff members whom IPS knew acted inappropriately with minor students and who demonstrated a propensity toward committing unlawful acts against minor students.

**ANSWER:** IPS Defendants admit there is a duty under Indiana law to exercise reasonable care in hiring, supervising, and retaining an employee, but deny any breach of that duty, and deny the remaining allegations in Paragraph 172 of the Complaint.

173. At all relevant times herein, Defendants IPS and FEREBEE had a duty to take steps to eliminate conditions or practices that encouraged or allowed harassment, sexual abuse, or other misconduct by school counselors.

**ANSWER:** IPS Defendants admits there is a duty under Indiana law to exercise ordinary and reasonable care for the safety of students, but deny any breach of that duty, and deny the remaining allegations in Paragraph 173 of the Complaint.

174. At all relevant times herein, IPS, its officials and employees, and FEREBEE had a duty to immediately report suspected child abuse or neglect to DCS.

**ANSWER:** IPS Defendants admit a duty to report child abuse or neglect as described in Ind. Code 31-33-5-1 *et seq.*, and deny the remaining allegations in Paragraph 174 of the Complaint.

175. Defendants IPS and FEREBEE breached their duties as described herein and said breaches constitute negligence.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 175 of the Complaint.

176. Despite identifying inappropriate conduct between TAYLOR and male students, IPS and FEREBEE allowed TAYLOR to continue her employment as a school counselor at Positive Supports Academy.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 176 of the Complaint.

177. Defendants IPS and FEREBEE acted negligently and it was reasonably foreseeable that their failure to implement reasonable prevention measures would cause harm to A.H. and other Positive Supports Academy students.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 177 of the Complaint.

178. Defendants IPS and FEREBEE acted negligently and it was reasonably foreseeable that their failure to train their teachers and staff to recognize signs of grooming, and other harassment or abuse, created a risk that behavior of the type that TAYLOR committed would occur.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 178 of the Complaint.

179. IPS and FEREBEE negligently failed to adequately supervise TAYLOR.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 179 of the Complaint.

180. IPS and FEREBEE negligently retained TAYLOR as the school counselor at Positive Supports Academy.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 180 of the Complaint.

181. IPS and FEREBEE negligently failed to train its staff, principals, teachers, and human resources professionals concerning inappropriate relationships between counselors and students and how to recognize and prevent sexual abuse and harassment.

**ANSWER:** IPS Defendants deny the allegations in Paragraph 181 of the Complaint.

182. IPS, FEREBEE, and IPS officials and staff members failed to immediately report TAYLOR's abuse and harassment of A.H. to DCS.

**ANSWER:** IPS Defendants admit that certain IPS officials, principals, and/or staff at Public Supports Academy failed to immediately report the information provided by Janet regarding Taylor's alleged inappropriate relationship with A.H., and deny the remaining allegations in Paragraph 182 of the Complaint.

183. As a result of IPS's and FEREBEE's negligence, negligent hiring, and negligent supervision and retention of TAYLOR, A.H. suffered damages.

**ANSWER:** IPS Defendants deny that were negligent in any way with respect to Plaintiff's rights, and deny Plaintiff is entitled to any relief in this action.

## **VI. Relief Requested**

WHEREFORE, the Plaintiff, A.H., hereby seeks all relief available under the law, including:

- A. An award of damages to compensate A.H. for damages he sustained by the unlawful practices described above;
- B. Compensatory and consequential damages;
- C. Attorney fees and costs;
- D. Prejudgment and postjudgment interest; and

E. Grant such further relief as the Court deems necessary and proper in the public interest and pursuant to 42 U.S.C. § 1983.

**ANSWER:** IPS Defendants deny the allegations in the Relief Requested, deny all allegations not expressly admitted in this Answer, and deny that Plaintiff is entitled to any relief based on the matters alleged in the Complaint.

## **II. AFFIRMATIVE AND OTHER DEFENSES**

1. The Court lacks supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiff's Indiana state law claims.

2. One or more of Plaintiff's claims fail, in whole or in part, because the Complaint fails to state a claim on which relief can be granted.

3. IPS Defendants have not deprived Plaintiff of any federal constitutional or statutory rights. *Daniels v. Williams*, 474 U.S. 327, 330-331 (1986).

4. IPS Defendants took reasonable steps to prevent and remedy any allegedly harassing conduct of which it was aware and Plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities provided by IPS or to otherwise avoid harm.

5. IPS Defendants acted in good faith at all times and any and all decisions and actions regarding A.H.'s education were lawful.

6. With regard to each and every act of sexual abuse or harassment allegedly committed by Taylor against A.H., such acts (if they occurred) were not within the scope and course of Taylor's employment with IPS, and IPS Defendants had no actual or constructive knowledge of those acts.

7. IPS Defendants cannot be held liable on the grounds of *respondeat superior* under 42 U.S.C. § 1983 for an employee's violation of that statute. *Doe v. St. Francis Sch. Dist.*, 694 F.3d 869, 871 (7th Cir. 2012).

8. Dr. Ferebee, as named in his individual capacity, is entitled to qualified immunity, because his actions, at all times, were taken in good faith and did not violate any constitutional rights of which a reasonable person would have known.

9. The Complaint fails to state a claim against IPS for the reason that it does not contain allegations of an official policy, custom, practice or usage sufficient to invoke municipal liability.

10. IPS Defendants are immune from liability from the state law claims, pursuant to Ind. Code § 34-13-3-3, including but not limited to subsections 6, 7, 8, and 9.

11. To the extent the Plaintiff presents a claim for punitive damages under 42 U.S.C. § 1983 against IPS or Dr. Ferebee in his official capacity, such a claim is barred under federal law. *Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981).

12. Exemplary or punitive damages are barred under Indiana state law, Ind. Code § 34-13-3-4.

13. Plaintiff's claims are barred, in whole or in part, by the Eleventh Amendment of the United States Constitution.

14. IPS Defendants reserve the right to amend or add affirmative defenses as information may be learned through discovery or for other appropriate reasons.

WHEREFORE, Defendants request that Plaintiff take nothing by way of his Complaint, that the Court enter judgment in favor of Defendants, and that the Court award Defendants their attorneys' fees, their costs, and all other just and proper relief.



Respectfully submitted,

FAEGRE BAKER DANIELS LLP

s/Amy Steketee Fox

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of January, 2018, a copy of the foregoing was filed electronically and that a copy was served upon the following by electronic filing or United States first-class mail, postage prepaid:

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